

# **STATE OF CALIFORNIA FRAUD ASSESSMENT COMMISSION**

## **Summary Meeting Minutes Sacramento, California September 16, 2008**

In attendance: William Zachry, Chair, and Commission Members Darlyn Regan, Jiles Smith, Carol Schatz and Lilia Garcia.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Rick Plein, Bureau Chief, Workers' Compensation Anti-Fraud Program; and Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chair William Zachry opened the meeting and commented this was one of the more important meetings as the Commission would determine the annual aggregate assessment. The workers' compensation community is experiencing a new trend with an explosion of sleep clinics. The issue of permanent disability now is that the injury caused a sleep disorder. He advised to be aware of the scenario and know that many of the sleep disorder clinics are legitimate, but some definitely are not.

Chair Zachry noted he had seen some national statistics and that California has the greatest number of investigations, arrests and convictions associated with workers' compensation fraud in the nation. When you look at the dollars spent on a per capita basis and the amount of money paid for insurance premiums, California is lower than many of the other states. "I believe that the employers of California are spending a significant amount of money to fund the fight against workers' compensation fraud, and they deserve a return on that investment," stated Zachry.

Chair Zachry remarked, "When a California employer hires an insurance company, that company is truly dedicated to the fraud fight. Does the insurance company have an internal fraud fighting unit or do they outsource? I am not asking that any proprietary information be divulged, but I do want some public information given out so employers can make a good decision," stated Zachry. He further noted the information should be on the Department's web site.

Chair William Zachry raised the issue as to whether there were any corrections to the submitted minutes from June 17, 2008.

### **Motion**

Commission member Schatz made the motion to accept the minutes as submitted.

### **Action**

The minutes were unanimously passed.

Dori Rose Inda, Executive Director, Watsonville Law Center's Workers' Compensation Enforcement Collaborative (WCEC), presented an update. For the past couple of years, the WCEC has been working to ensure that workers have access to medical treatment, particularly those who have uninsured employers and non-compliant employers. Historically, there has been about a year and a half lag in benefits under the Uninsured Employers Benefits Trust Fund (UEBTF). A few representatives from the WCEC met with John Duncan, Department of Industrial Relations (DIR) and Carrie Nevans from the Division of Workers' Compensation (DWC) to discuss the barriers, possible solutions and ways to address them.

Additionally, WCEC may create a pilot model that would design an advocacy role within an information and assistance office, in order to collect more information about the level of need for that kind of service.

Several other issues were discussed including possible legislative changes to assist workers to obtain benefits under the UEBTF. We want to facilitate enforcement against employers.

Commission member Garcia remarked that there are predatory employers who are deliberately avoiding responsibility. The employees are not provided information and the employers make it very difficult to obtain that information.

Chairman Zachry commented that the cooperation of John Duncan was essential to change the process and make a difference. Mr. Duncan oversees the Division of Workers' Compensation as well as the Uninsured Employers Fund and the Division of Labor Standards and Enforcement.

### **District Attorneys**

Gary Fagan, co-chair, California District Attorneys Association (CDAA) Insurance Fraud Committee, addressed the FAC. He reminded the Commission that during this economic downturn, the district attorneys have generally budgeted for cost of living increases and a few other escalating costs. He also reminded the Commission that it is very early in the process and very difficult for district attorneys to provide accurate projections for the upcoming year. For fiscal year 2009/10, the district attorneys are requesting \$32.7 million.

Currently, we do not track the amount of unfunded contributions provided by the counties. "I think that budget officers can tell you exactly how much the overruns are in direct expenses," commented Fagan. Chair Zachry suggested that the department include that information in the next Request-for -Application process.

"We are really in a pretty minimal funding area, especially compared to some other states like Florida, Texas and New York," remarked Fagan.

Commission member Schatz raised the issue as to how these states fund for their fraud programs. “I do believe this is an important issue. Is it possible to obtain some information about states that seem to have effective programs and how they are funded?”

Deputy Commissioner Banda noted that the Coalition Against Insurance Fraud does an annual survey of all states that are part of the National Association of Insurance Commissioners, and they compare the budgets, the amount of funding, prosecutions, referrals etc. and rate the states on their efficiency, budgets and trends. Chairman Zachry requested that the department research the states mentioned and report back to the Commission at the next meeting.

Chairman Zachry called on each of the thirty-seven grant-funded counties to provide oral presentations if the district attorneys had additional or new information to support their prospective budgets. In summary, the results are as follows:

Humboldt, Imperial, San Luis Obispo and Tuolumne did not submit a 2009/10 proposed budget plan; therefore, the department substituted their 2008/09 requested funding. These counties did not make oral presentations.

Mendocino and Riverside did not submit written proposals, but did provide an oral presentation on the needs of their respective counties; however, the department substituted their 2008/09 funding figures.

Butte, Contra Costa, Kings, Madera, Marin, San Joaquin, San Mateo, Santa Barbara, Santa Cruz, Shasta, Solano and Sonoma did not make oral presentations to the Commission.

Alameda, El Dorado, Fresno, Kern, Los Angeles, Monterey, San Bernardino, Tehama, Tulare and Yolo all requested more funding to increase program staff.

Amador, Merced, Orange, Sacramento, San Diego, San Francisco, Santa Clara, Siskiyou and Ventura proposed budgets for program maintenance and COLA increases.

### **Enforcement Branch, Fraud Division Report**

Deputy Commissioner Banda requested an update from John Standish, Bureau Chief, who is responsible for the development and coordination of the Insurance Commissioner’s Advisory Task Force on Insurance Fraud.

Bureau Chief Standish reported that on May 29, 2008, Insurance Commissioner Poizner released the formal report. The report contains 18 recommendations for the Insurance Commissioner to consider or implement to reduce insurance fraud in California.

Many of the recommendations require changes in regulation, statutes or legislation. One of the recommendations, however, is already being implemented and is known as the

Fusion Center. This is a system that utilizes existing data resources within the Department and reaches out and brings other public resources into the Fusion Center. Through this developing technology, we will have the knowledge and the tools to predict emerging insurance fraud trends.

“We are working closely with the Department of Homeland Security, the Department of Insurance Technology and Information Staff, and two representatives from Dunn & Bradstreet to create a model that should be up and running online in June 2009. This new Fusion Center will give law enforcement the tools to be proactive instead of operating reactively as we do now,” reported Standish.

Deputy Commissioner Banda proceeded with his remarks and addressed the 2007/08 Strategic Plan. “The first objective is to reduce employer misrepresentation. We worked 437 cases and this takes a great deal of investigative resources for both the department and the district attorneys. The next objective is medical provider cases—the report reflects 59 cases. Many of these require undercover operations and reflect between 4,000 and 8,000 investigative hours. Although these cases are major cost drivers, Fraud Division experience shows that when these cases go to court, they take ‘forever’. The alleged fraudulent provider has sufficient monies to pay for the very best defense teams. Also, claimant fraud continues to be a major issue for employers.”

A critical component within the program is outreach. The Enforcement Branch provides balanced presentations to private, governmental and public sectors. Outreach can oftentimes be measured to determine whether or not fraud has been reduced in that particular area.

Deputy Commissioner Banda remarked, “Commissioner Poizner is very concerned and wants to ensure that the Department responds quickly to disasters.” This year, California has had an ongoing problem with fires. In Southern California, the Fraud Division made 25 arrests. The word has spread that we are very proactive and have reduced the occurrence of fraud in this arena.

Deputy Commissioner Banda commented that the department is a regulatory agency, by nature, which reaches out into areas that the law enforcement community cannot. One of those areas is the Investigation Division which is funded by fees and licensing through agents and brokers and insurance companies for both regulatory and criminal malfeasance.

The Enforcement Branch also oversees the fiscal auditing of grant-funded counties and the compliance auditing of insurance companies. In both instances, the units shall only audit according to the regulations. The Fraud Grant Audit Unit (FGAU) has conducted several audits which have included workers’ compensation grant funded counties. To date, no malfeasance has been identified. The FGAU has identified areas of missed deadlines, incorrect staffing numbers and other administrative issues. Previously, the FAC requested that the SIU compliance audits be made public. The department is legally researching the boundaries of that request and a written report will be provided at the

next FAC meeting. “We can only make insurance companies compliant. We can’t make them committed to anti-fraud. They have to be committed from the top down,” stated Banda.

As the department continues to move into the newest forms of technology, one area just completed is that of the full-time computer forensic team. This was a difficult task to accomplish. The department had to create, develop and implement ways to document actual workload time. We maintained statistics on search warrants, imaging and reviewing of investigative files for calendar year 2006 and determined that 9,000 investigative hours had been expended on computer usage.

The Fraud Division is working with the San Diego County District Attorney’s Office, through Dominic Dugo, on the new program entitled “Case Agent Investigative Review.” Deputy District Attorney Dugo remarked that San Diego has a computer forensic laboratory. By purchasing this equipment (approximately \$75,000), San Diego is able to hook up all the workers’ comp investigators and all the Department Insurance investigators. This allows about 30 investigators to perform the initial computer analysis of the confiscated evidence and the crime lab promises about a two-week turnaround for reports. Currently, this process could take from several months up to a year or more.

Commission member Regan raised the issue as to whether or not imaging software is included in the initial cost. Deputy District Attorney Dugo acknowledged that the lab must do the imaging. The CAIR process allows for investigators to go to a secure internet site from their desktop computers and complete the analysis.

Discussion continued and Deputy Commissioner Banda noted he wants to see the results of the CAIR program in San Diego before committing to designated personnel. Deputy Commissioner Banda then commented on the return of investment to the Workers’ Compensation Insurance Fraud Program. District Attorneys use the term ‘chargeable fraud’ which means fraud that can be proven is charged. The case may have potentially higher fraudulent amounts, but the prosecutor is not able to prove the case. Last year, for every dollar spent in the program, the anti-fraud return was \$5.90 or a one-to-six ratio, reported Banda.

Deputy Commissioner Banda provided some observations on what makes a good workers’ compensation program. The four main qualities for a good program are: leadership, communication, training, and education. Deputy Commissioner Banda concluded his remarks and commented on how much he enjoyed his time with the Department and working closely with the Fraud Assessment Commission. He then acknowledged the newly appointed Deputy Commissioner of the Enforcement Branch, Mr. Rick Plein.

Deputy Commissioner Plein addressed the FAC and gave an overview of his direction for the Branch. Deputy Commissioner Plein commended Dale for his dedication, leadership, hard work and long hours he willingly gave to the Department and, in particular, the Workers’ Compensation Anti-Fraud Program.

Deputy Commissioner Plein noted the importance of investigating the major cost drivers of the system such as medical mills. These cases most often attract the press, send a big message and yield a return on the investment. “We need to increase our use of technology and technology is expensive,” stated Plein. DC Plein also commented that he would like to expand the computer forensics teams and expand the law enforcement knowledge base. The Enforcement Branch is seeing more sophisticated crimes being committed by medical providers which include various individuals behind the scenes.

Deputy Commissioner Plein noted that he is working with Human Resources to change the minimum qualifications for investigators. This will enable the Division to hire investigators in several expert areas, as well as criminal justice.

Deputy Commissioner Plein commented that he places an emphasis on communication and collaboration with the district attorneys and the Fraud Assessment Commission in order to enhance efficiency of the Workers’ Compensation Program. Deputy Commissioner Plein next spoke to the strategic plan focusing on cost drivers and maintaining a balanced caseload. One new area for increased efficiency is to strategically place high speed scanners throughout the state for use by district attorneys for discovery purposes.

In conclusion, Deputy Commissioner Plein requested a total of \$21,215,000 to cover the needs of the Fraud Division for fiscal year 2009/10.

### **Public Comment**

Chairman Zachry opened the meeting for public comments. One individual spoke to the deterrence factor which is the result of investigating, arresting and prosecuting fraudsters.

With that, the Chairman opened discussion and deliberation regarding the determination of the aggregate assessment.

Commission member Jiles Smith commented on his concern with the return on investment and how their assessment decision will affect jobs and employers overall.

### **Motion**

Commission member Jiles Smith recommended the assessment stay the same as last year.

The Chairman requested a second to the motion and, being none, called for another motion.

### **Motion**

Commission member Darlyn Regan made the motion that the FAC determine a 2.5 percent increase, with incidental costs, for an approximate \$51,525,000 for the aggregate.

Discussion continued and the issue was raised as to whether or not the amount included funding for the pilot IT program in San Diego in anticipation of a viable program to change the effectiveness of prosecution.

Chairman Zachry repeated the motion under consideration. The total aggregate assessment is \$51,525,700 offset by the funds held in the Workers' Compensation Fraud Account totaling \$1,223,455. The split is as follows:

Fraud Division	\$21,198,200 plus
Incidental Costs	\$ 100,000
Total	\$21,298,200

District Attorneys	\$29,827,500
Incidental Costs	\$ 100,000
Software IT Project	\$ 300,000
Total	\$30,227,500

Collectible	\$50,302,245
-------------	--------------

### **Motion**

Commission member Schatz concurred with the above motion.

Commission member Regan seconded the motion.

### **Action**

Roll call:

Commission member Garcia	Aye
Commission member Smith	Aye
Commission member Regan	Aye
Commission member Schatz	Aye
Commission Chairman Zachry	Aye

The motion passed unanimously.

Chairman Zachry offered comments regarding the research project completed as well as the proposed project from the Commission on Health and Safety and Workers' Compensation (CHSWC). Chairman Zachry acknowledged the importance of the Navigant Study as it was based on the State Audit recommendation. The Chairman noted that in the future if other studies are needed, the FAC would assess additional funding.

Further comments were made regarding some 'best practices' like full-time designated investigators and prosecutors in grant-funded programs and eliminating rotational policies within the district attorneys' offices. Chairman Zachry remarked on prosecuting both civilly and criminally when appropriate. Also, the Chairman noted the program importance of a balanced caseload and commented that claimant fraud is still the most irritating to employers. He continued and commented on the importance of an active and

effective Joint Investigative Plan, the need for ongoing outreach, transitioning from a hard to a soft copy process, and the significance of effective leadership and training.

Chairman Zachry announced that the next meeting would be held in January 2009 in San Diego.

The meeting adjourned at 3:06 p.m.